

## Residential Tenancies Tribunal

Decision 20-0029-02

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 1:03 am on 03 November 2020 via teleconference.
2. The applicant, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as “the landlord”. The respondent, [REDACTED], hereinafter referred to as “the tenant”, also participated.

### Issues before the Tribunal

3. The landlord is seeking the following:
  - a. An order for a payment of rent in the amount of \$850.00, and
  - b. An order for vacant possession of the rented premises.

### Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case are sections 18 and 19 of the *Residential Tenancies Act, 2018*.

### Preliminary Matters

6. The landlord amended her claim and stated that she was now seeking a payment of rent in the amount of \$1400.00 for the period ending 31 October 2020.

## **Issue 1: Rent Owing - \$1400.00**

### **Relevant Submissions**

#### The Landlord's Position

7. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with the tenant, commencing 20 September 2019, and a copy of that executed lease was submitted with her application. The agreed rent was set at \$850.00 per month, due on the 1<sup>st</sup> day of each month, and it is acknowledged in the lease that the tenant had paid a security deposit of \$400.00.
8. The landlord submitted rent records with her application showing the payments she had received from the tenant since she had moved into the rented premises. According to these records and the landlord's testimony, the tenant owes \$550.00 for September 2020 and the full rent of \$850.00 for October 2020.
9. The landlord is seeking an order for a payment of \$1400.00 for the period ending 31 October 2020 and a daily rate of rent for November 2020.

#### The Tenant's Position

10. The tenant did not dispute the landlord's records of the payments she had made since she had moved in and she acknowledged that she owes the landlord \$1400.00 for the period ending 31 October 2020. The tenant stated that she would be paying the landlord that money, as required.
11. The tenant stated that she had withheld the rent as there were several maintenance issues at the unit that the landlord had failed to address and also because the homeowners had been harassing her.
12. Regarding the maintenance issues, the tenant complained that the toilet at the unit had backed up 3 times and some of her possessions had become ruined as a result. She also stated that there is an issue with the dryer vent and she now has to have her clothes dried at the sister's home.

### **Analysis**

13. Where there are maintenance issues at a rental property that the tenant believes the landlord is responsible for addressing, she is required to first issue the landlord a written request for repairs. If a landlord fails to carry out the repairs in a reasonable amount of time, the tenant may make application to this Section to either: (i) seek an order for a rebate of rent, or (ii) seek an order directing the landlord to carry out those repairs while the rent is paid to this Board, in trust, until such time as the repairs are completed.
14. No evidence was submitted at the hearing to establish that the tenant had issued the landlord with such a request for repairs and she has not made application to

this Section. Without some sort of authorization from this Board, the tenant was not in a position during September and October 2020 to withhold her rent.

15. There was no dispute about the record of the tenant's payments submitted by the landlord. As the landlord is also seeking an order for vacant possession of the rented premises, I find that she is entitled to a payment of rent to the day of the hearing and a per diem thereafter.
16. I calculate the amount owing to be \$2228.34 (\$1400.00 for the period ending 31 October 2020 and 83.61 for November 2020 ( $\$850.00 \times 12 \text{ months} = \$10200.00$  per year  $\div 366 \text{ days} = \$27.87$  per day  $\times 3 \text{ days} = \$83.61$ ).

### **Decision**

17. The landlord's claim for a payment of rent succeeds in the amount of \$1483.61.
18. The tenant shall pay a daily rate of rent in the amount of \$27.87, beginning 04 November 2020, and continuing to the date the landlord obtains vacant possession of the rented premises.

### **Issue 3: Vacant Possession of the Rented Premises**

#### **Relevant Submissions**

19. The landlord stated that she had issued 3 termination notices to the tenant over the past several months, and copies of these notices were submitted with her application.
20. The first notice was a standard, 3-month notice, issued under section 18 of the *Residential Tenancies Act, 2018*. It was delivered to the tenant on 01 July 2020 and it had an effective termination date of 30 September 2020. The landlord stated that this notice was subsequently retracted by the homeowner.
21. The second termination notice was given to the tenant on 08 September 2020. This notice was issued under section 19 of the *Act* (notice where failure to pay rent) and it had an effective termination date of 18 September 2020. The landlord testified that this notice did not meet the 10-day timeframe requirements set out in this section of the *Act* and she acknowledged that it was therefore null and void.
22. Accordingly, a third notice was issued to the tenant on 19 October 2020. That notice was also issued under s. 19 and it had an effective termination date of 30 October 2020.
23. The landlord stated that the tenant has moved out, as required by this third notice, and she is seeking an order for vacant possession of the rented premises.

## The Tenant's Position

24. The tenant acknowledged receiving the first termination notice on 01 July 2020, but she claimed that the owner had changed her mind about her moving out. She stated that the owner had originally intended to sell the house but then decided to allow the tenant to reside at the property as the toilet was now working.
25. With respect to the third termination notice issued on 19 October 2020, the tenant acknowledged receiving that notice. She stated that she agrees that she owes the landlord rent she also understands that she has to move out of the apartment.

## **Analysis**

26. The landlord stated that her first termination notice was retracted and that her second notice was not valid. Let's address the third notice, then. Section 19 of the *Residential Tenancies Act, 2018* states:

### ***Notice where failure to pay rent***

**19. (1) *Notwithstanding subsection 18(2) and paragraph 18(3)(b),***

...

***(b) where the residential premises is***

***(i) rented from month to month,***

***(ii) rented for a fixed term, or***

***(iii) a site for a mobile home, and***

***the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.***

***(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.***

27. According to the landlord's testimony and rent records, on 19 October 2020 the tenant was in arrears in the amount of \$1400.00 and had been in arrears since 02 September 2019. No payments were made by the tenant prior to the effective termination date set out in that notice.

28. As the tenant had not paid off the arrears prior to 30 October 2020 and as the notice meets the timeframe requirements set out in section 19 of the *Act*, it is a valid notice.

### Decision

29. The landlord's claim for an order for vacant possession of the rented premises succeeds.

30. The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

### Issue 4: Hearing Expenses

31. The landlord paid a fee of \$20.00 to file this application. As her claim has been successful, the tenant shall pay that hearing expense.

### Issue 5: Security Deposit

32. The landlord stated that the tenant had paid a security deposit of \$400.00 on 17 September 2019 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, she shall retain the security deposit as outlined in this decision and order.

### Summary of Decision

33. The landlord is entitled to the following:


- A payment of \$1103.61, determined as follows
  - a) Rent Owing .....\$1483.61
  - b) Hearing Expenses.....\$20.00
  - c) **LESS: Security Deposit..... (\$400.00)**
  - d) Total Owing to Landlord .....\$1103.61
- A payment of a daily rate of rent in the amount of \$27.87, beginning 04 November 2020 and continuing to the date the landlord obtains possession of the rental unit,
- An order for vacant possession of the rented premises,

- The tenant shall also pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

05 November 2019

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Date



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John R. Cook  
Residential Tenancies Tribunal